IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 26 OF 2002.

Shri Narcinva J. Dukle,
r/at Cobra Wado,
Calangute. ... Applicant.

Versus

1. Shri Arvind B. Gadvi,
   Partner of M/s D.I.
   Gadvi, having office
   near Hotel Mandovi,
   M.G. Road, Panaji.
2. State of Goa through
   Public Prosecutor. ... Respondents.

Mr. Sudesh Usgaonkar, Advocate for the Applicant.

Mr. A.D. Bhobe, Advocate for the Respondent No. 1.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 2 State.

Coram: P.V. HARDAS, J.

Date: 23rd January 2003.

ORAL JUDGMENT.

By consent of parties, this revision is taken up for final disposal at the stage of admission.

2. The petitioner, who is the original accused, and the respondent no. 1, who is the original complainant, have produced before me an application for compounding the offence. The said application is taken on record and marked 'X' for the purpose of identification. The application is signed by the counsel for the parties as well as the applicant and the respondent no. 1.

3. The present applicant/accused had been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, by the Judicial Magistrate, First Class, Panaji, by Judgment, dated 14th February 2000 and was sentenced to undergo simple imprisonment for one month and to pay compensation of Rs. 2,90,000/- to the respondent no. 1/complainant. Being aggrieved by his conviction, the present applicant/accused had filed Criminal Appeal No. 8 of 2000 and the same came to be dismissed by the IInd Additional Sessions Judge, Panaji, by Judgment, dated 7th November 2002, confirming the conviction and sentence passed by the learned trial Court. The applicant/accused has, therefore, preferred this Criminal Revision Application under Section 397 of the Code of Criminal Procedure in this Court.

4. In the application for compounding the offence, it is stated that the applicant/accused has paid an amount of Rs. 2,90,000/- by Demand Draft, dated 20th January 2003, drawn on the State Bank of India. The complainant/respondent no. 1 admits to have received the draft. It is, therefore, urged before me that in view of the amicable settlement arrived at between the parties, the complainant and the accused be permitted to compound the offence. The applicant/accused and the respondent no. 1/complainant

are present in the Court and acknowledge the signatures on the application for compounding the offence.

5. The learned counsel appearing on behalf of the parties have fairly submitted that, despite the application for compounding, the offence under the Negotiable Instruments Act is not a compoundable offence. It is stated before me that there are conflicting Judgments of the other High Courts on this point. Without deciding the question whether the offence is compoundable or not, in the peculiar facts and circumstances of the case, since the complainant has received the amount of the cheque and has also expressed his desire that he does not want to proceed with the case any further, I think the modification in the sentence would meet the ends of justice. Accordingly, the conviction for the offence under Section 138 of the Negotiable Instruments Act as passed by the Judicial Magistrate, First Class, Panaji, in Criminal Case No. 258/OA/97/B and confirmed by the learned lower appellate Court in Criminal Appeal No. 8 of 2000 is maintained. The sentence of one month simple imprisonment is, hereby, quashed and set aside and is substituted with the sentence of simple imprisonment till the rising of the Court. The Order of the learned trial Court directing the applicant/accused to pay compensation of Rs. 2,90,000/- to the respondent no. 1/complainant

under Section 357(3) of the Code of Criminal Procedure is maintained. The applicant/accused has already paid the aforesaid compensation to the complainant/respondent no. 1 by Demand Draft, dated 20th January 2003, drawn on the State Bank of India, which is acknowledged by the complainant/respondent no. 1 in the application marked 'X'.

6. With the aforesaid direction and modification in the sentence, Criminal Revision Application is, accordingly, partly allowed. Bail bond stands cancelled.

(P.V. HARDAS)
JUDGE.

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